

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

BRIAN A. SHIELDS,	)	CASE NO. 1:17-CV-01631
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
v.	)	
	)	
ANDREW SAUL,	)	<b><u>MEMORANDUM OPINION</u></b>
Commissioner of Social Security,	)	<b><u>AND ORDER</u></b>
	)	
Defendant.	)	

This case is before the Court on Plaintiff, Brian A. Shields’s (“Mr. Shields or “Plaintiff”) Motion for Attorney’s Fees Pursuant to 42 U.S.C. § 406(b) of the Social Security Act (the “Act”). (ECF #20). Defendant Andrew Saul, Commissioner of Social Security (the “Commissioner” or “Defendant”) filed a Response to the Motion. (ECF #23). Plaintiff’s Counsel, Attorney Paulette F. Balin (“Attorney Balin”), asks this Court to issue an Order awarding her \$8,734.25 in attorney’s fees from the past-due benefits owed to Plaintiff pursuant to § 406(b) of the Act. (ECF #20).

Plaintiff’s claim generated a total of \$74,937.00 in past-due DAC benefits. (ECF #20). On October 19, 2018, Attorney Balin was granted Equal Access to Justice Act (“EAJA”) fees by stipulation of the parties in the amount of \$3,093.47. (ECF #19). The Social Security Administration sent a Notice of Award dated January 14, 2020, notifying Plaintiff that 25% of his retroactive award is \$18,734.15, and that this amount is being withheld from his benefits as attorney’s fees.

Administrative Law Judge (“ALJ”) Pamela Loesel approved \$10,000.00 in attorney’s fees pursuant to 42 U.S.C. § 406(a) for work performed before the administration in this matter. Specifically, ALJ Loesel authorized a fee of \$7,070.00 for Attorney Matthew J. Shupe and a fee of \$2,930.00 for Attorney Balin.

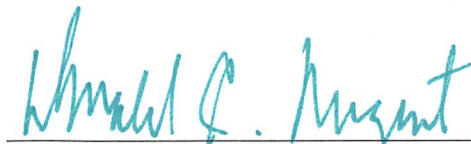
Defendant filed a Response to Plaintiff's Motion for Attorney's Fees (ECF #23), indicating that he does not object to the fee request under § 406(b) and asks this Court to order Plaintiff's counsel to refund the EAJA award of \$3,093.47 when received, as counsel is required to refund the claimant the lesser of the § 406(b) and EAJA awards. Per Defendant's Response, agency counsel has confirmed that the \$3,093.47 payment is forthcoming. (ECF #23).

Pursuant to 42 U.S.C. § 406(b), the Court may award attorney's fees to a successful claimant's counsel for work performed before the Court in a reasonable amount, not to exceed twenty-five (25%) of the total past-due benefits. These fees are awarded from the past-due benefits awarded to the claimant and are withheld from the claimant by the Commissioner. *See Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

The \$8,734.25 fee requested under § 406(b) for services rendered only in federal court represents 11% of the past-due SSDI benefits paid on Plaintiff's account. When combined with the \$10,000.00 award authorized in § 406(a) fees, the requested § 406(b) fees do not exceed 25% of past-due benefits, as consistent with the parties' fee agreement and the law. Accordingly, this Court finds that the amount of \$8,734.25 in attorney's fees is reasonable and appropriate.

THEREFORE, this Court authorizes a payment to Attorney Paulette F. Balin in the amount of \$8,734.25 in attorney's fees being withheld from Plaintiff's past-due benefits, and that upon receipt of this sum, Attorney Balin will remit \$3,093.47 directly to Plaintiff.

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
Senior United States District Judge

DATED: July 21, 2020